



VIRGINIA

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THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, and notices of public hearings on regulations.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposed regulation in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety, and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar of Regulations no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*.

If the Governor finds that the final regulation contains changes made after publication of the proposed regulation that have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his

authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

A regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at register.dls.virginia.gov.

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **34:8 VA.R. 763-832 December 11, 2017**, refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **Marcus B. Simon, Chair; Russet W. Perry, Vice Chair; Katrina E. Callsen; Nicole Cheuk; Richard E. Gardiner; Ryan T. McDougle; Michael Mullin; Christopher R. Nolen; Steven Popps; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade.**

Staff of the *Virginia Register*: **Holly Trice**, Registrar of Regulations; **Anne Bloomsburg**, Assistant Registrar; **Nikki Clemons**, Managing Editor; **Erin Comerford**, Regulations Analyst.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the Virginia Register of Regulations website (<http://register.dls.virginia.gov>).

April 2026 through April 2027

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
42:17	March 18, 2026	April 6, 2026
42:18	April 1, 2026	April 20, 2026
42:19	April 15, 2026	May 4, 2026
42:20	April 29, 2026	May 18, 2026
42:21	May 13, 2026	June 1, 2026
42:22	May 27, 2026	June 15, 2026
42:23	June 10, 2026	June 29, 2026
42:24	June 24, 2026	July 13, 2026
42:25	July 8, 2026	July 27, 2026
42:26	July 22, 2026	August 10, 2026
43:1	August 5, 2026	August 24, 2026
43:2	August 19, 2026	September 7, 2026
43:3	September 2, 2026	September 21, 2026
43:4	September 16, 2026	October 5, 2026
43:5	September 30, 2026	October 19, 2026
43:6	October 14, 2026	November 2, 2026
43:7	October 28, 2026	November 16, 2026
43:8	November 10, 2026 (Tuesday)	November 30, 2026
43:9	November 23, 2026 (Monday)	December 14, 2026
43:10	December 9, 2026	December 28, 2026
43:11	December 21, 2026 (Monday)	January 11, 2027
43:12	January 5, 2027 (Tuesday)	January 25, 2027
43:13	January 20, 2027	February 8, 2027
43:14	February 3, 2027	February 22, 2027
43:15	February 17, 2027	March 8, 2027
43:16	March 3, 2027	March 22, 2027
43:17	March 17, 2027	April 5, 2027
43:18	March 31, 2027	April 19, 2027

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Initial Agency Notice

Title of Regulation: 18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic.

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Name of Petitioner: Dr. Timothy Mountcastle.

Nature of Petitioner's Request: The petitioner requests that the Board of Medicine promulgate regulations that (i) state that cosmetic injections constitute the practice of medicine; (ii) establish documentation standards for cosmetic injection consultations and procedures; (iii) define supervision requirements, including emergency protocols; and (iv) evaluate supervision standards for cosmetic injection services, including off-site supervision and on-site supervision.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on March 23, 2026. The petition will also be published on the Virginia Regulatory Town Hall to receive public comment, which opens March 23, 2026, and closes April 22, 2026. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public comment. That meeting is currently scheduled for June 4, 2026. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: April 22, 2026.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 750-3912, or email erin.barrett@dhp.virginia.gov.

VA.R. Doc. No. PFR26-23; Filed March 2, 2026, 2:53 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 1. ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES

Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **1VAC30-11, Public Participation Guidelines**. The review will be guided by the principles in Executive Order 19 (2022). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins March 23, 2026, and ends April 13, 2026.

Comments must include the commenter's name and address (physical or email) in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Kimberly Freiberger, Policy Planning Specialist III, Department of General Services, 1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 205-3861, or email kimberly.freiberger@dgs.virginia.gov.

sought on the review of any issue relating to the regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins March 23, 2026, and ends April 13, 2026.

Comments must include the commenter's name and address (physical or email) in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Claire Morris, RN, Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4665, or email claire.morris@dhp.virginia.gov.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **18VAC90-30, Regulations Governing the Licensure of Advanced Practice Registered Nurses** and **18VAC90-40, Regulations for Prescriptive Authority for Advanced Practice Registered Nurses**. The reviews will be guided by the principles in Executive Order 19 (2022). The purpose of these reviews is to determine whether the regulations should be repealed, amended, or retained in their current forms. Public comment is

REGULATIONS

For information concerning the different types of regulations, see the Information Page.

Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Emergency Regulation

Title of Regulation: 4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-10, 4VAC20-720-40).

Statutory Authority: § 28.2-210 of the Code of Virginia.

Effective Dates: March 1, 2026, through March 15, 2026.

Agency Contact: Benjamin Foster, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23651, telephone (757) 709-9277, or email benjamin.foster@mrc.virginia.gov.

Preamble:

In response to lower-than-anticipated harvest effort resulting from poor market conditions and inclement weather, the amendments adjust the public oyster harvest

season in Rappahannock River Area 8 and extend the public oyster harvest season in Pocomoke and Tangier Sound Rotation Area 1.

4VAC20-720-10. Purpose.

The purpose of this emergency chapter is to conserve Virginia's oyster resources, especially oyster broodstock.

4VAC20-720-40. Open oyster harvest season, harvest areas, and harvest limits.

A. It shall be unlawful for any person to harvest oysters from public and unassigned grounds, except within the dates and areas and with the harvest gears set forth in this section.

B. It shall be unlawful to harvest clean cull oysters from the public oyster grounds and unassigned grounds, except within the seasons and areas and with the harvest gears as described in Table 1 in this subsection.

It shall be unlawful to exceed the daily individual bushel harvest limit or the daily vessel bushel limit of clean cull oysters in Table 1 in this subsection.

Table 1 Clean Cull Oyster Harvest Area, Harvest Dates, Harvest Gear, and Daily Bushel Limits				
Harvest Area	Harvest Dates	Harvest Gear	Daily Individual Bushel Limit	Daily Vessel Bushel Limit
Great Wicomico River Rotation Area 1	December 1, 2025, through December 31, 2025	Hand Scrape	8	16
Great Wicomico River Rotation Area 2	January 1, 2026, through January 31, 2026	Hand Scrape	8	16
James River Areas 1, 2, and 3	October 15, 2025, through March 31, 2026	Hand Scrape	8	16
Mobjack Bay Area	February 1, 2026, through March 15, 2026	Hand Scrape	8	16
Piankatank River Area	February 1, 2026, through March 15, 2026	Hand Scrape	8	16
Pocomoke Sound Area Public Ground 10	February 16, 2026, through February 28, 2026	Hand Scrape	8	16
Rappahannock River Area 7	December 1, 2025, through December 31, 2025	Hand Scrape	8	16
Rappahannock River Area 8	January <u>March</u> 1, 2026, through January 31 <u>March 15</u> , 2026	Hand Scrape	8	16

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Rappahannock River Rotation Area 2	February 1, 2026, through March 15, 2026	Hand Scrape	8	16
Rappahannock River Rotation Area 4	October 15, 2025, through November 30, 2025	Hand Scrape	8	16
Upper Chesapeake Bay - Blackberry Hangs Area	February 1, 2026, through March 15, 2026	Hand Scrape	8	16
White Shoal	November 1, 2025, through February 28, 2026	Hand Scrape	8	16
Corrotoman Hand Tong Area	October 1, 2025, through March 31, 2026	Hand Tong	14	28
Indian Creek	October 1, 2025, through March 31, 2026	Hand Tong	14	28
James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area	October 1, 2025, through May 31, 2026	Hand Tong	14	28
James River Areas 1, 2, and 3	October 1, 2025, through October 14, 2025, and April 1, 2026, through May 31, 2026	Hand Tong	14	28
Little Wicomico River	October 1, 2025, through December 31, 2025	Hand Tong	14	28
Milford Haven	December 1, 2025, through February 28, 2026	Hand Tong	14	28
Mobjack Bay Area	October 1, 2025, through January 31, 2026	Hand Tong	14	28
Nomini Creek Area	October 1, 2025, through December 31, 2025	Hand Tong	14	28
Piankatank River Area	October 1, 2025, through January 31, 2026	Hand Tong	14	28
Pocomoke Sound Area Public Ground 10	October 1, 2025, through February 15, 2026, and March 1, 2026, through March 31, 2026	Hand Tong	14	28
Pocomoke Sound Hand Tong Area	October 1, 2025, through March 31, 2026	Hand Tong	14	28
Rappahannock River Area 9	October 1, 2025, through March 31, 2026	Hand Tong	14	28
White Shoal	October 1, 2025, through October 31, 2025, and March 1, 2026, through May 31, 2026	Hand Tong	14	28
York River Hand Tong Area	October 1, 2025, through March 15, 2026	Hand Tong	14	28

York River Rotation Areas 1 and 2	October 1, 2025, through March 15, 2026	Hand Tong	14	28
Pocomoke and Tangier Sound Rotation Area 1	December 1, 2025, through February 28 March 15, 2026	Oyster Dredge	8	16
Thorofare	November 15, 2025, through November 30, 2025	Oyster Dredge	8	16
Deep Rock Area and Chesapeake Bay Patent Tong Area	November 1, 2025, through March 31, 2026	Patent Tong	8	16
Seaside Eastern Shore	November 1, 2025, through March 31, 2026	By Hand or Hand Tong	14	28

C. It shall be unlawful to harvest seed oysters from the public oyster grounds or unassigned grounds, except within the dates and areas and with the harvest gears described in Table 2 in this subsection.

Harvest Area	Harvest Dates	Harvest Gear
James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area	October 1, 2025, through May 31, 2026	Hand Tong

D. In the Pocomoke and Tangier Sounds Rotation Areas, it shall be unlawful to possess on board any vessel more than 250 hard clams.

E. It shall be unlawful to possess any blue crabs on board any vessel with an oyster scrape or oyster dredge.

F. It shall be unlawful for any person or vessel to harvest clean cull oysters with more than one gear type in any single day from the public oyster grounds or unassigned grounds in the waters of the Commonwealth of Virginia.

VA.R. Doc. No. R26-8590; Filed February 26, 2026, 3:10 p.m.

TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Action Withdrawn

Title of Regulation: 11VAC10-47. **Historical Horse Racing (amending 11VAC10-47-180).**

Statutory Authority: § 59.1-369 of the Code of Virginia.

The Virginia Racing Commission has WITHDRAWN the regulatory action for **11VAC10-47, Historical Horse Racing**, which was published as a Notice of Intended Regulatory Action in [40:25 VA.R. 1996 July 29, 2024](#). The purpose of the proposed action was to reduce the number of required tellers at historical horse racing terminals from two to one at Collinsville, Dumfries, and Emporia satellite wagering facilities; from three to two at Hampton and Richmond satellite wagering facilities; and from eight to three at the Rose satellite wagering facility. The commission is withdrawing the action as of February 24, 2026, to evaluate whether the amendments remain necessary and appropriate. The rulemaking was initiated in 2024. The commission will consider amendments to this chapter as part of a broader general regulatory review of commission rules.

Agency Contact: Rhonda Davis, Director of Pari-Mutuels and Licensing, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23124, telephone (804) 966-7415, email rhonda.davis@vrc.virginia.gov.

VA.R. Doc. No. R24-7958; Filed February 24, 2026, 3:37 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Fast-Track Regulation

Title of Regulation: 12VAC5-220. **Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations (amending 12VAC5-220-100).**

Statutory Authority: §§ 32.1-12 and 32.1-102.2 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: April 22, 2026.

Effective Date: May 7, 2026.

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Agency Contact: Geoff Garner, Senior Policy Analyst, Virginia Department of Health, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-2157, or email geoff.garner@vdh.virginia.gov.

Basis: Section 32.1-12 authorizes the State Board of Health to make, adopt, promulgate, and enforce regulations necessary to carry out the provisions of Title 32.1 of the Code of Virginia and other laws of the Commonwealth administered by the board, the Commissioner of Health, or the Virginia Department of Health. Section 32.1-102.2 of the Code of Virginia requires the board to promulgate regulations consistent with Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia and, specifically, to establish an exemption from the requirement for a certificate for a project involving a temporary increase in the total number of beds in an existing hospital or nursing home under certain conditions.

Purpose: This action is essential to protect the health, safety, and welfare of citizens because normal state controls on the hospital and nursing home bed inventory in the Commonwealth have proven to be too inflexible during certain public health emergencies where demand for beds outstrips both the current inventory and the mandated processes by which additional inventory can be authorized. These amendments will allow hospitals and nursing homes to temporarily increase bed inventory in response to disasters and other public health emergencies, while still allowing the commissioner sufficient oversight to ensure the beds are being operated and staffed safely.

Rationale for Using Fast-Track Rulemaking Process: This action is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the minimum information required when requesting temporary beds and the process described are consistent with the minimum information requested of hospitals and nursing homes and the process that was utilized during the COVID-19 pandemic pursuant to Executive Orders 52 (2020), 84 (2022), 11 (2022), and 16 (2022).

Substance: The amendments (i) create a process that is exempt from Certificate of Public Need requirements to allow hospitals and nursing homes to temporarily increase bed inventory during disasters or other public health emergencies and (ii) add a Request for Temporary Beds form.

Issues: The primary advantage to the public is the ability to rapidly and temporarily increase hospital or nursing home bed inventory during disasters or other public health emergencies while preserving life safety code protections and safe staffing. The primary advantage to the Commonwealth is a new exemption process that grants more discretion and flexibility to the board and commissioner in responding to public health emergencies for which additional bed inventory is needed without needing either a legislative amendment to the Code of Virginia or an executive order from the Governor. There are no primary disadvantages to the public or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation. Pursuant to Chapters 712 and 772 of the 2022 Acts of Assembly, the State Board of Health (board) proposes to incorporate in the regulation an exemption from the certificate of public need rules for nursing homes and hospitals that may request a temporary increase in their bed capacity to respond to public health emergencies and to specify the information needed to evaluate such requests.

Background. Prior to the COVID-19 pandemic, § 32.1-102.2 A 6 of the Code of Virginia provided the board or the Commissioner of Health with limited authority to grant an exemption from the requirement for a certificate of public need for a temporary increase in the total number of beds in an existing hospital or nursing home for no more than 30 days when a natural or man-made disaster has caused the evacuation of a hospital or nursing home and a public health emergency exists due to a shortage of hospital or nursing home beds. However, this authority was insufficient for the board or the commissioner to grant an exemption from the certificate of public need rules for a temporary increase in nursing home or hospital beds in order to respond to the COVID-19 pandemic. Instead, during the pandemic, the Virginia Department Health (VDH) utilized an alternative authorization process pursuant to Executive Orders 52 (2020), 84 (2022), 11 (2022), and 16 (2022). According to VDH, normal state controls (i.e., existing certificate of need statutes and regulations) on the hospital and nursing home bed inventory in the Commonwealth have proven to be too inflexible during certain public health emergencies where demand for beds outstrips both the existing inventory and the mandated processes by which additional inventory can be authorized. In order to address these concerns, the 2022 General Assembly passed Chapters 712 and 772. This legislation requires the board to amend its regulation about exemptions for certificates of public need for a temporary increase in the total number of beds in an existing hospital or nursing home to include a temporary increase in the total number of beds resulting from the addition of beds at a temporary structure or satellite location operated by the hospital or nursing home, provided that the ability remains to safely staff services across the existing hospital or nursing home. These acts also amended the exemption to now also be triggered by an emergency order entered pursuant to § 32.1-13 or 32.1-20 of the Code of Virginia for the purpose of suppressing a nuisance dangerous to public health or a communicable, contagious, or infectious disease or other danger to the public life and health.² The duration of this exemption was amended to be either (i) a period of no more than the duration of the commissioner's determination plus 30 days when the commissioner has determined that a natural or man-made disaster has caused the evacuation of a hospital or nursing home and that a public health emergency exists due to a shortage of hospital or nursing home beds or (ii) a period of no more than the duration of the emergency order entered pursuant to § 32.1-13 or 32.1-20 of the Code of Virginia plus 30 days. In short, this regulatory action would amend the regulation to provide an exemption from the

certificate of public need rules at the discretion of the board or the commissioner for a temporary increase in nursing home or hospital beds during certain public health emergencies as directed by the legislation.

Estimated Benefits and Costs. Without the proposed changes to this regulation, the board or the commissioner must rely on executive orders to temporarily increase the bed capacity at nursing homes and hospitals as it has been done between 2020 and 2022. Under the proposed amendments, the board or the commissioner would have the discretion and authority to temporarily increase the bed capacity at nursing homes and hospitals as provided in the legislation. According to VDH, the information required when requesting temporary beds and the process described in this regulatory action is consistent with the minimum information that was requested of hospitals and nursing homes and the process that was utilized during the COVID-19 pandemic pursuant to the executive orders. Requested information included name, license number, contact information for the nursing home or the hospital requesting the increase, the planned use and staffing for the temporary beds, location, and some other attendant information to ensure safety. The main benefit of the proposed regulatory change is to implement a legislative mandate to create an expeditious process by which hospitals and nursing homes can request temporary beds in responding to public health emergencies while ensuring that the commissioner and VDH have sufficient information to take action on the request. There does not appear to be any significant costs associated with the proposed regulatory changes as the authority and discretion provided to the commissioner or the board to grant an exemption from the certificate of public need rules for a temporary bed capacity are mandated by the legislation and the information to be provided with an application is the same as what had been requested in the process utilized under the executive orders.

Businesses and Other Entities Affected. The proposed changes apply to existing nursing homes and hospitals. According to VDH, there are 106 licensed general hospitals and 287 nursing homes. Between 2020 and 2022, 57 facilities (49% of all inpatient hospitals and 1.0% of all nursing homes) added over 3,700 temporary beds under the executive orders in response to COVID-19 pandemic. None of the affected entities appear to be disproportionately affected. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.³ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined. The authority and discretion provided to the board or the commissioner is legislatively mandated, and the information the board is proposing to require with a temporary bed capacity increase application is the same as what had been requested under the executive orders. Thus, no adverse impact is indicated.

Small Businesses⁴ Affected.⁵ VDH does not believe any general hospital meets the definition of small business and does not have any data to estimate how many nursing homes may, if any, meet the definition of small business. However, the proposed amendments do not appear to adversely affect small businesses.

Localities⁶ Affected.⁷ The County of Bedford operates a nursing home. Lee County and Chesapeake Hospital Authorities each

operate a licensed general hospital. However, the proposed amendments do not appear to introduce costs for local governments.

Projected Impact on Employment. The proposed amendments do not appear to affect total employment.

Effects on the Use and Value of Private Property. No impact on the use and value of private property or real estate development costs is expected from promulgation of the proposed regulatory amendments.

¹ Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² See <https://law.lis.virginia.gov/vacode/title32.1/chapter1/section32.1-13/> and <https://law.lis.virginia.gov/vacode/title32.1/chapter1/section32.1-20/>.

³ Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁴ Pursuant to § 2.2-4007.04, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

⁵ If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁶ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁷ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The State Board of Health has reviewed the economic impact analysis prepared by the Department of Planning and Budget and believes the contents to be substantively complete and accurate.

Summary:

Pursuant to Chapters 712 and 772 of the 2022 Acts of Assembly, the amendments adjust the exemption from the certificate of public need rules at the discretion of the State

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Board of Health or the Commissioner of Health for a temporary increase in nursing home or hospital beds during certain public health emergencies.

12VAC5-220-100. Requirements for reviewable medical care facility projects; exceptions.

A. Prior to initiating a reviewable medical care facility project, the owner or sponsor shall obtain a certificate of public need from the commissioner, except as provided in subsection B of this section. In the case of an acquisition of an existing medical care facility, the notification requirement set forth in 12VAC5-220-120 shall be met.

B. ~~Projects~~ Provided that an existing hospital or nursing home complies with subsections C, D, and F of this section, a project involving a temporary increase in the total number of beds in an existing hospital or nursing home shall be exempt from the requirement for a certificate, for a period of no more than 30 days, if the:

1. The commissioner has determined that a natural disaster or man-made disaster has caused the evacuation of a hospital or nursing home and that a public health emergency exists due to a shortage of hospital or nursing home beds; or

2. The board has entered an emergency order pursuant to § 32.1-13 of the Code of Virginia or if the commissioner has entered an emergency order pursuant to §§ 32.1-13 and 32.1-20 of the Code of Virginia for the purpose of suppressing:

- a. A nuisance dangerous to public health;
- b. A communicable, contagious, or infectious disease; or
- c. Other danger to the public life and health.

C. An existing hospital or nursing home may request a temporary increase in its total number of beds by filing a Request for Temporary Beds form with the department that includes:

- 1. The name of the hospital or nursing home;
- 2. The license number of the hospital or nursing home;
- 3. The name of the nursing home administrator, the hospital chief executive officer, or the chief executive officer's designee;
- 4. The telephone number of the nursing home administrator, the hospital chief executive officer, or the chief executive officer's designee;
- 5. The email address of the nursing home administrator, the hospital chief executive officer, or the chief executive officer's designee;
- 6. The number and type of temporary beds the hospital or nursing home anticipates adding;
- 7. The planned use of the temporary beds;
- 8. The plans for staffing the temporary beds;

9. The efforts undertaken or to be undertaken to reduce or eliminate the number of temporary beds needed;

10. The address of the building, temporary structure, or satellite location where the hospital or nursing home intends to locate the temporary beds;

11. The specific locations within the building, temporary structure, or satellite location where the hospital or nursing home intends to locate the temporary beds;

12. Whether the locations identified in subdivision 11 of this subsection meet life safety code requirements for the type of patients or residents expected to occupy those temporary beds;

13. If life safety code requirements are not currently met for the locations identified in subdivision 11 of this subsection, what action the hospital or nursing home will take to meet life safety code requirements; and

14. Any other information that the board or commissioner may request.

D. The hospital or nursing home shall provide additional information as may be requested or required by the commissioner to evaluate the temporary bed request.

E. The commissioner shall notify the hospital or nursing home in writing of the commissioner's decision on the temporary bed request. If granted, the commissioner may attach conditions to the approval that, in the sole judgment of the commissioner, protects public, patient, or resident health, safety, or welfare.

F. The hospital or nursing home may not add temporary beds unless its request has been granted and may not operate temporary beds more than 30 days after the expiration of:

- 1. The commissioner's determination pursuant to subdivision B 1 of this section; or
- 2. The board's or the commissioner's emergency order pursuant to subdivision B 2 of this section.

G. The department shall promptly inform the Department of Medical Assistance Services and the Centers for Medicare and Medicaid Services of the identity of any hospital or nursing home certified as a Medicare provider or Medicaid provider that fails to comply with subsection F of this section.

H. The commissioner may rescind or modify the approval of a temporary bed request if:

- 1. Additional information becomes known that alters the basis for the original approval, including if the hospital or nursing home added temporary beds prior to receiving the approval; or
- 2. The hospital or nursing home fails to meet any conditions attached to the approval.

1. No certificate of public need shall be required for use of up to 10 beds per day among the medical care facility's inpatient hospital beds as swing beds for the furnishing of services of the type that if furnished by a nursing home or certified nursing facility would constitute skilled care services by a medical care facility described in § 32.1-102.1:3 A 1 of the Code Virginia that is certified as a critical access hospital by the Centers for Medicare and Medicaid Services pursuant to Title XVIII of the Social Security Act (42 USC § 1395 et seq.). For purposes of this subsection, a critical access hospital may calculate the 10-swing-bed-per-day limitation as an average over the fiscal year of the hospital. In the event the calculation exceeds an average of equal to or fewer than 10 swing beds in any fiscal year, the critical access hospital shall have the following fiscal year to reduce the fiscal year average to equal to or fewer than 10 swing beds. Any critical access hospital that fails to reduce the fiscal year average to equal to or fewer than 10 swing beds during the second fiscal year shall no longer be able to calculate the 10-swing-bed limitation by averaging on a fiscal year basis and shall calculate the limitation on a daily basis until such time as it has met the 10-swing-bed-per-day limit for two consecutive fiscal years, at which time averaging may resume. No critical access hospital shall have more than 15 swing beds per day for more than five consecutive days. A critical access hospital shall make a good faith effort and document the efforts made to place each additional patient in a certified nursing facility prior to exceeding the 10-swing-bed-per-day limit.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

FORMS (12VAC5-220)

Application for Expedited Review for Certificate of Public Need (eff. 6/1994)-

Registration Form for Capital Expenditures of \$1,000,000 or More But Less than \$2,000,000 Which are Not Defined as a Project on or After July 1, 1993:-

Request for Extension of a Certificate of Public Need Beyond Two Years from Date of Issuance:-

Request for Extension of a Certificate of Public Need Beyond One Year, But Less ~~then~~ than Two Years from Date of Issuance (~~Rev.~~ rev. 7/1993):-

Application for a Medical Care Facilities Certificate of Public Need - Outpatient Facilities (~~Rev.~~ rev. 12/1992):-

Application for a Medical Care Facilities Certificate of Public Need - Hospitals (~~Rev.~~ rev. 12/1992):-

Application for a Medical Care Facilities Certificate of Public Need - Long-Term Care Facilities (~~Rev.~~ rev. 10/2007):-

[Request for Temporary Beds, OLC-1009-F \(eff. 6/2022\)](#)

V.A.R. Doc. No. R26-7197; Filed February 25, 2026, 1:30 p.m.

Fast-Track Regulation

Title of Regulation: **12VAC5-391. Regulations for the Licensure of Hospice (amending 12VAC5-391-440).**

Statutory Authority: §§ 32.1-12 and 32.1-162.5 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: April 22, 2026.

Effective Date: May 7, 2026.

Agency Contact: Geoff Garner, Senior Policy Analyst, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 685-9690, fax (804) 527-4502, or email regulatorycomment@vdh.virginia.gov.

Basis: Section 32.1-12 of the Code of Virginia authorizes the State Board of Health to make, adopt, promulgate, and enforce regulations necessary to carry out the provisions of Title 32.1 of the Code of Virginia. Section 32.1-162.5 of the Code of Virginia requires the board to promulgate regulations governing the activities and services provided by hospices, including the establishment of minimum standards for design and construction of hospice facilities consistent with the current edition of the Facility Guidelines Institute (FGI) Guidelines for Design and Construction of Hospital and Health Care Facilities.

Purpose: This action is essential to protect the health, safety, and welfare of the citizens of the Commonwealth because it standardizes space and equipment requirements and promotes safe practices and methods in planning, design, and construction. The goal of this regulatory change is to update the regulation to incorporate the 2022 edition of the FGI Guidelines for Design and Construction of Hospital and Health Care Facilities.

Rationale for Using Fast-Track Rulemaking Process: This rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the proposed amendments are nondiscretionary and only update references to the FGI guidelines from the 2018 edition to the 2022 edition.

Substance: The amendments (i) update the edition of the FGI guidelines incorporated by reference, (ii) incorporate by reference errata to the 2022 edition of the guidelines, and (iii) update references to the guidelines within the chapter.

Issues: The primary advantage to the public is reduced confusion among regulants regarding which edition of the FGI guidelines is the controlling edition. The primary advantage to the agency is conformity with the legal mandates set forth by

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the Code of Virginia. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation. Pursuant to the Code of Virginia, the State Board of Health (board) is updating this regulation to reflect the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities issued by the Facility Guidelines Institute (FGI).

Background. Section 32.1-162.5 B of the Code of Virginia requires hospice facility regulations to include minimum standards for the design and construction of hospices that are consistent with the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities issued by American Institute of Architects Academy of Architecture for Health.² The Virginia Department of Health (VDH) has clarified that, the design and construction standards were published by the American Institute of Architects Academy of Architecture for Health (AIA-AAH) from 1987 to 2006. The AIA-AAH no longer releases its own guidelines for the design and construction of health care facilities and instead develops these guidelines with the FGI, the nonprofit successor.³ The regulation currently references the 2018 Guidelines for Design and Construction of Residential Health, Care, and Support Facilities. These guidelines are revised and updated every four years. Accordingly, the board seeks to update the regulation to replace references to parts of the 2018 Guidelines with the corresponding parts of the 2022 Guidelines as well as Errata to the 2022 Edition.⁴ The corresponding documents incorporated by reference would also be updated. In addition, the agency is making a few minor nonsubstantive style and form changes to the text of regulation.

Estimated Benefits and Costs. To comply with Virginia statute, hospice facility construction, renovation, or alterations must comply with the applicable sections of the 2022 FGI Guidelines. As a result, VDH anticipates that there may be a quantifiable indirect cost equal to a 0.2% increase in construction costs for a model facility that is multiple stories of non-combustible construction and a 0.4% increase in construction costs for a model facility that is a single story of combustible construction, based on projections developed by FGI.⁵ The proposed changes would benefit readers of the regulation by providing updated and accurate references.

Businesses and Other Entities Affected. VDH reports that there are 88 licensed hospice facilities in Virginia, 20 of which are estimated to meet the definition of small business.⁶ Only hospices that undertake renovations or alterations would be affected by the proposed changes. VDH is unable to quantify the number of entities that will construct a hospice facility, or the number of current facilities that will alter or renovate their facilities. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁷ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs

for all entities combined. Although the updates to the Guidelines are expected to increase construction costs as described above, the board does not propose to make any discretionary changes that would increase net costs or reduce net revenues. Because any increase in costs results directly from the statutory mandate, an adverse impact from the regulatory change itself is not indicated.

Small Businesses⁸ Affected.⁹ VDH estimates that 20 of the licensed hospices meet the definition of small business. These businesses may face additional costs if they choose to renovate or alter their hospice facilities. New hospices that may be established by small businesses would also be affected. However, any additional costs would result from the statutory mandate to comply with the current version of the Guidelines.

Localities¹⁰ Affected.¹¹ The proposed changes would not disproportionately affect any particular localities and would not affect costs for local governments. Chesapeake Regional Medical Center, which is governed by the Chesapeake Hospital Authority¹² operates a licensed hospice program but does not have a hospice facility; they would be impacted if they were to open a hospice facility.¹³

Projected Impact on Employment. The proposed regulation would not affect employment.

Effects on the Use and Value of Private Property. The updates to the FGI Guidelines are expected to marginally increase the construction costs of hospice facilities; thus, the value of entities that operate hospice facilities and choose to renovate or alter the facility structures would marginally decrease. Similarly, real estate development costs for hospice facilities would be increased. However, these effects accrue from the statutory mandate to implement the current Guidelines and not directly from the proposed changes.

¹ Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² See <https://law.lis.virginia.gov/vacode/title32.1/chapter5/section32.1-162.5/>.

³ Email from VDH dated January 18, 2024.

⁴ See <https://fgiguideines.org> and <https://fgiguideines.org/guidelines/errata-addenda/>. More detail about the specific differences between the 2108 and 2022 editions may be found at <https://fgiguideines.org/wp-content/uploads/2022/10/2022-RES-Major-additions-and-revisions.pdf>.

⁵ See page 5 Agency Background Document (ABD) at https://townhall.virginia.gov/GetFile.cfm?File=58\6326\10137\AgencyStatement_VDH_10137_v2.pdf.

⁶ ABD, page 5.

⁷ Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁸ Pursuant to § 2.2-4007.04, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

⁹ If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

¹⁰ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹¹ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

¹² The City of Chesapeake city council appoints members of the Authority; the Authority operates Chesapeake Regional Medical Center. See <https://law.lis.virginia.gov/authorities/chesapeake-hospital-authority/>.

¹³ See <https://chesapeakeregional.com/services-specialties/home-health-hospice/hospice>.

Agency Response to Economic Impact Analysis: The Virginia Department of Health has reviewed the economic impact analysis prepared by the Department of Planning and Budget and believes the contents to be substantively complete and accurate.

Summary:

As required by § 32.1-162.5 B of the Code of Virginia, the amendments update the version of the Guidelines for Design and Construction of Hospital and Health Care Facilities issued by the Facility Guidelines Institute incorporated by reference into the regulation to the 2022 edition, which were published May 2022.

12VAC5-391-440. General facility requirements.

A. All construction of new buildings and additions, renovations or alterations of existing buildings for occupancy as a hospice facility shall conform to state and local codes, zoning and building ordinances and the Uniform Statewide Building Code.

In addition, hospice facilities shall be designed and constructed according to ~~section~~ Part 1, Part 2, and Chapter 3.2 of Part 3 of the 2018 Guidelines for Design and Construction of Residential Health, Care, and Support Facilities of the, 2022 Edition (The Facility Guidelines Institute), as amended by the December 2023 Errata for Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, 2022 Edition (The Facility Guidelines Institute).

B. All buildings shall be inspected and approved as required by the appropriate regional state fire marshal's office or building and fire regulatory official. Approval shall be a

Certificate of Use and Occupancy indicating the building is classified for its proposed licensed purpose.

C. The facility ~~must~~ shall have space for private patient family visiting and accommodations for family members after a patient's death. Patients shall be allowed to receive guests, including small children, at any hour.

D. Patient rooms shall not exceed two beds per room and must be at grade level or above, enclosed by four ceiling-high walls. Each room shall be equipped for adequate nursing care, the comfort and privacy of patients, and with a device for calling the staff member on duty.

E. Designated guest rooms for a patient's family members or ~~patient~~ guests and beds for use by employees of the facility shall not be included in the bed capacity of a hospice facility provided such beds and locations are identified and used exclusively by staff, volunteers or patient guests.

~~Employees shall~~ An employee may not utilize patient rooms ~~nor shall and patients may not use~~ bedrooms for employees ~~be used by patients.~~

F. Waste storage shall be located in a separate area outside or easily accessible to the outside for direct pickup or disposal. The use of an incinerator shall require permitting from the nearest regional permitting office for the Department of Environmental Quality.

G. The facility shall provide or arrange for under written agreement, laboratory, x-ray, and other diagnostic services, as ordered by the patient's physician.

H. There shall be a plan implemented to ~~assure~~ ensure the continuation of essential patient support services in case of power outages, water shortage, or in the event of the absence from work of any portion of the workforce resulting from inclement weather or other causes.

I. No part of a hospice facility may be rented, leased, or used for any purpose other than the provision of hospice care at the facility.

J. A separate and distinct entrance shall be provided if the program intends to administer and provide its community-based hospice care from the facility so that such traffic and noise shall be diverted away from patient care areas.

K. The hospice facility shall maintain a complete set of legible "as built" drawings showing all construction, fixed equipment, and mechanical and electrical systems, as installed or built.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-391)

~~2018 Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, The Facility Guidelines Institute.~~

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Errata for Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, The Facility Guidelines Institute, 2022 Edition, <https://fgiguilines.org/guidelines/errata-addenda/> (eff. 12/2023)

Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, The Facility Guidelines Institute, 2022 Edition, <https://fgiguilines.org>

VA.R. Doc. No. R26-6792; Filed February 25, 2026, 1:29 p.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 14VAC5-405. Rules Governing Balance Billing for Out-of-Network Health Care Services (amending 14VAC5-405-20, 14VAC5-405-30, 14VAC5-405-40).

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: March 3, 2026.

Agency Contact: Jackie Myers, Chief Insurance Market Examiner, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9630, or email jackie.myers@scc.virginia.gov.

Summary:

The amendments (i) add definitions of "general business practice" and "good faith negotiation period"; (ii) require a health carrier to provide instructions regarding the claim payment dispute process and to develop and implement processes to analyze the outcome of arbitration decisions involving the same provider, CPT code, and geographic area in determining a commercially reasonable payment amount; (iii) clarify requirements related to the good faith negotiation period and the ability for the health carrier and the out-of-network provider to continue to negotiate after the good faith negotiation period; (iv) prohibit health carriers or providers from initiating arbitration with such frequency as to indicate a general business practice; and (v) clarify that any payment due from the health carrier to the provider is subject to the applicable interest provisions stipulated in the Code of Virginia.

Changes to the proposed regulation include removing the requirement for a health carrier to develop and implement processes to analyze the outcome of arbitration decisions involving the same provider, CPT code, and geographic area in determining a commercially reasonable payment amount.

AT RICHMOND, MARCH 2, 2026

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2025-00072

Ex Parte: In the matter of amending
Rules Governing Balance Billing for
Out-of-Network Health Care Services

ORDER ADOPTING AMENDMENTS

On August 25, 2025, the State Corporation Commission (Commission) entered an Order Establishing Proceeding regarding a proposal by the Bureau of Insurance (Bureau) to amend rules set forth in Chapter 405 of Title 14 of the Virginia Administrative Code, 14VAC5-405-10 et seq., entitled Rules Governing Balance Billing for Out-of-Network Health Care Services (Amended Rules).

The Bureau recommended the Amended Rules to provide clarity and consistency in the interpretation and administration of processes related to payment disputes and arbitration, including certain technical amendments to align the rules with current federal and state law.

The Order Establishing Proceeding and the Amended Rules were sent to all carriers licensed in Virginia to write accident and sickness insurance and other interested parties on

August 29, 2025; were sent to the Office of the Virginia Attorney General's Division of Consumer Counsel (Consumer Counsel); and were published in the Virginia Register of Regulations on September 22, 2025. Licensees, Consumer Counsel, and other interested parties were afforded the opportunity to file written comments and/or request a hearing on or before October 31, 2025 (Comment Period).

Prior to expiration of the Comment Period, the Bureau discovered that the link on the Commission's website for the submission of comments in this case was not active. To ensure that the public had the full opportunity to participate in this proceeding, the Commission entered an Amending Order on November 6, 2025, giving interested persons additional time to comment on, propose modifications or supplements to, or request a hearing on the proposed Amended Rules, and to extend the Bureau's attendant timeframe to submit its response to comments.

The Amending Order was sent to all carriers licensed in Virginia to write accident and sickness insurance and other interested parties on November 12, 2025; sent to Consumer Counsel; and published in the Virginia Register of Regulations on December 1, 2025. Licensees, Consumer Counsel, and other interested parties were afforded the opportunity to file written comments or request a hearing on or before December 31, 2025.

Comments to the Amended Rules were filed by Dominion Plastic Surgery, the Virginia Association of Health Plans, the Virginia

Hospital & Healthcare Association, and the ERISA Industry Committee. No requests for a hearing were filed with the Clerk of the Commission.

The Bureau considered the comments filed and responded to them in its Response to Comments (Response), which the Bureau filed with the Clerk on January 30, 2026. In its Response, the Bureau proposed certain changes to the Amended Rules and identified why the Bureau believes certain proposed revisions cannot or should not be made. The Bureau also proposed additional revisions as clarifications to the Amended Rules.

The Bureau has recommended to the Commission that the Amended Rules be adopted as proposed in its Response.

NOW THE COMMISSION, having considered this matter, concludes that the attached Amended Rules should be adopted effective March 3, 2026. The Commission declines to adopt any recommendation to further limit what constitutes a "general business practice" beyond the definition as set forth in the Amended Rules. In so doing, we clarify that we make no finding as to our authority to implement a two-tiered process for determining what constitutes a general business practice pursuant to § 38.2-3445.05 D of the Code of Virginia (Code). We further agree with the Bureau and decline to impose limitations on the good faith negotiation process. Yet, we do so without making any finding as to whether governing law affords the Commission authority to impose such limitations.

The Commission expresses appreciation to all those who filed written comments. The comments in this case were beneficial to determining how the Commission's rules can best reach the goals set at the outset of this proceeding: (1) the definitions of general business practice and good faith negotiation period; (2) the applicability of interest provisions in §§ 38.2-3407.1 and 38.2-4306.1 of the Code to any payment due from the health carrier to the provider; and, (3) the requirement for health carriers to develop and implement processes to analyze the outcome of arbitration decisions involving the same provider, Current Procedural Technology Code and geographic area in determining a commercially reasonable payment amount. Ultimately, the Amended Rules are improved.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to Rules Governing Balance Billing for Out-of-Network Health Care Services at Chapter 405 of Title 14 of the Virginia Administrative Code, which are attached hereto and made part hereof, are ADOPTED effective March 3, 2026.

(2) The Bureau shall provide notice of this Order Adopting Amendments and the adopted Amended Rules to all insurers licensed in Virginia to write accident and sickness insurance and to any other interested persons as the Bureau may designate.

(3) The Commission's Office of General Counsel shall provide a copy of this Order Adopting Amendments, and the adopted Amended Rules, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) Interested persons may download unofficial copies of this Order Adopting Amendments and the adopted Amended Rules from the Commission's website: scc.virginia.gov/case-information.

(5) This case is dismissed.

A COPY hereof shall be sent by the Clerk of the Commission to: John E. Farmer, Jr., Senior Assistant Attorney General, at jfarmer@oag.state.va.us, Office of the Attorney General, Division of Consumer Counsel, 202 North 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Julie Blauvelt.

14VAC5-405-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Allowed amount" means the maximum portion of a billed charge a health carrier will pay, including any applicable cost-sharing requirements, for a covered service or item rendered by a participating provider or by a nonparticipating provider.

"Arbitrator" means an individual included on a list of arbitrators approved by the commission pursuant to 14VAC5-405-50.

"Balance bill" means a bill sent to an enrollee by an out-of-network provider for health care services provided to the enrollee after the provider's billed amount is not fully reimbursed by the carrier, exclusive of applicable cost-sharing requirements.

"Child" means a son, daughter, stepchild, adopted child, including a child placed for adoption, foster child, or any other child eligible for coverage under the health benefit plan.

"Clean claim" means a claim (i) that has no material defect or impropriety, including any lack of any reasonably required substantiation documentation, that substantially prevents timely payment from being made on the claim; and (ii) that includes required Internal Revenue Service documentation for the carrier to process payment. A carrier shall notify the person submitting the claim of any defect or impropriety.

"Commercially reasonable payment" or "commercially reasonable amount" means payments or amounts a carrier is required to reimburse a health care provider for out-of-network services pursuant to §§ 38.2-3445.01 and 38.2-3445.02 of the Code of Virginia.

"Commission" means the State Corporation Commission.

"Cost-sharing requirement" means an enrollee's deductible, copayment amount, or coinsurance rate.

"Covered benefits," ~~or~~ "benefits," or "covered services" means those health care services to which an individual is entitled under the terms of a health benefit plan.

"Dependent" means the spouse or child of an eligible employee, subject to the applicable terms of the policy, contract, or plan covering the eligible employee.

"Elective group health plan" means (i) a self-funded group health plan providing or administering an employee welfare

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benefit plan as defined in § 3(1) of ERISA, 29 USC § 1002(1), that is self-insured or self-funded with respect to such plan and that establishes for its enrollees a network of participating providers, or a self-funded group health plan for local government employees, local officers, teachers, and retirees, and the dependents of such employees, officers, teachers, and retirees; and (ii) elects to participate in the requirements of §§ 38.2-3445 through 38.2-3445.07 of the Code of Virginia by notifying the commission in accordance with 14VAC5-405-80.

"Emergency medical condition" means, regardless of the final diagnosis rendered to an enrollee, a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, so that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in (i) serious jeopardy to the mental or physical health of the individual, (ii) danger of serious impairment to bodily functions, (iii) serious dysfunction of any bodily organ or part, or (iv) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

"Emergency services" means [] with respect to an emergency medical condition [] (i) (a) a medical screening examination as required under § 1867 of the Social Security Act (42 USC § 1395dd) that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate such emergency medical condition and (ii) (b) such further medical examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the hospital, as are required under § 1867 of the Social Security Act (42 USC § 1395dd (e)(3)) to stabilize the patient; and (ii) as it relates to any mental health services or substance abuse services, as those terms are defined in § 38.2-3412.1 of the Code of Virginia, rendered at a behavioral health crisis service provider as defined in § 38.2-3438 of the Code of Virginia. (a) a behavioral health assessment that is within the capability of a behavioral health crisis service provider, including ancillary services routinely available to evaluate such emergency medical condition and (b) such further examination and treatment, to the extent that they are within the capabilities of the staff and facilities available at the behavioral health crisis service provider, as are required so that the patient's condition does not deteriorate.

"Enrollee" means a policyholder, subscriber, covered person, participant, or other individual covered by a health benefit plan.

"ERISA" means the Employee Retirement Income Security Act of 1974 (29 USC § 1001 et seq.).

"Facility" means an institution providing health care related services or a health care setting, including hospitals and other licensed inpatient centers; ambulatory surgical or treatment centers; skilled nursing centers; residential treatment centers;

diagnostic, laboratory, and imaging centers; and rehabilitation and other therapeutic health settings.

"General business practice" means the submission of a request for arbitration more frequently than five requests per 30-day period by [either] a health carrier [, facility,] or provider group (or sole health care professional not part of a provider group).

"Good faith negotiation period" means the 30 calendar days after the earlier of the provider's receipt of payment or payment notification from the health carrier.

"Health benefit plan" means a policy, contract, certificate, or agreement offered by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. "Health benefit plan" includes short-term and catastrophic health insurance policies, and a policy that pays on a cost-incurred basis, except as otherwise specifically exempted in this definition. "Health benefit plan" also includes an elective group health plan. "Health benefit plan" does not include the "excepted benefits" as defined in § 38.2-3431 of the Code of Virginia.

"Health care professional" means a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services consistent with state law.

"Health care provider" or "provider" means a health care professional or facility.

"Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

"Health carrier" or "carrier" means an entity subject to the insurance laws and regulations of the Commonwealth and subject to the jurisdiction of the commission that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurer licensed to sell accident and sickness insurance, a health maintenance organization, a health services plan, or any other entity providing a plan of health insurance, health benefits, or health care services.

"Initiating party" means the health carrier or out-of-network provider that requests arbitration pursuant to § 38.2-3445.02 of the Code of Virginia and 14VAC5-405-40.

"In-network" or "participating" means a provider that has contracted with a carrier or a carrier's contractor or subcontractor to provide health care services to enrollees and be reimbursed by the carrier at a contracted rate as payment in full for the health care services, including applicable cost-sharing requirements.

"Managed care plan" means a health benefit plan that either requires an enrollee to use, or creates incentives, including financial incentives, for an enrollee to use health care providers

managed, owned, under contract with, or employed by the health carrier.

"Network" means the group of participating providers providing services to a managed care plan.

"Offer to pay" or "payment notification" means a claim that has been adjudicated and paid by a carrier or determined by a carrier to be payable by an enrollee to an out-of-network provider for services described in subsection A of § 38.2-3445.01 of the Code of Virginia.

"Out-of-network" or "nonparticipating" means a provider that has not contracted with a carrier or a carrier's contractor or subcontractor to provide health care services to enrollees.

"Out-of-pocket maximum" or "maximum out-of-pocket" means the maximum amount an enrollee is required to pay in the form of cost-sharing requirements for covered benefits in a plan year, after which the carrier covers the entirety of the allowed amount of covered benefits under the contract of coverage.

"Provider group" means a group of multispecialty or single specialty health care professionals who contract with a facility to exclusively provide multispecialty or single specialty health care services at the facility.

"Receipt" means five calendar days after mailing or the date of electronic transmittal.

"Surgical or ancillary services" means any professional services, including surgery, anesthesiology, pathology, radiology, or hospitalist services and laboratory services.

"Written" or "in writing" means a written communication that is electronically transmitted. Paper communication is discouraged.

14VAC5-405-30. Balance billing for out-of-network services.

A. Pursuant to § 38.2-3445.01 of the Code of Virginia, no out-of-network provider shall balance bill or attempt to collect payment amounts from an enrollee other than those described in subsection B of this section for:

1. Emergency services provided to an enrollee by an out-of-network provider; or
2. Nonemergency services provided to an enrollee at an in-network facility if the nonemergency services involve otherwise covered surgical or ancillary services provided by an out-of-network provider.

B. An enrollee who receives services described in subsection A of this section is obligated to pay the in-network cost-sharing requirement specified in the enrollee's or applicable group health plan contract, which shall be determined using the carrier's median in-network contracted rate for the same or similar service in the same or similar geographic area. When there is no median in-network contracted rate for the specific

services provided, the enrollee's cost-sharing requirement shall be determined as provided in § 38.2-3407.3 of the Code of Virginia. ~~An enrollee who is enrolled in a high deductible health plan associated with a Health Savings Account or other health plan for which the carrier is prohibited from providing first dollar coverage prior to the enrollee meeting the deductible requirement under 26 USC § 223(c)(2) or any other applicable federal or state law may be responsible for any additional amounts necessary to meet deductible requirements beyond those described in this subsection, including additional amounts pursuant to subsection E of this section and owed to the out of network provider in 14VAC5 405 40, but only to the extent that the deductible has not yet been met and not to exceed the deductible amount.~~

C. When a clean claim is received pursuant to the provisions of subsection A of this section, the health carrier shall be responsible for:

1. Providing an explanation of benefits to the enrollee and the out-of-network provider that [~~(i)~~] reflects the cost-sharing requirement determined under this subsection; [~~and (ii) provides the out of network provider instructions to dispute the carrier's payment pursuant to subsection E of this section.~~

2. Providing the out-of-network provider instructions to dispute the carrier's payment pursuant to subsection E of this section;]

[~~2. 3.] Applying the in-network cost-sharing requirement under subsection B of this section and any cost-sharing requirement paid by the enrollee for such services toward the in-network maximum out-of-pocket payment obligation;~~

[~~3. 4.] Making commercially reasonable payments for services other than cost-sharing requirements directly to the out-of-network provider without requiring the completion of any assignment of benefits or other documentation by the provider or enrollee;~~

[~~4. 5.] Paying Negotiating with the out-of-network provider in good faith and paying any additional amounts owed to the out-of-network provider through good faith negotiation or arbitration directly to the out-of-network provider; and~~

[~~5. 6.] Making available to a provider through electronic or other method of communication generally used by a provider to verify enrollee eligibility and benefits information regarding whether an enrollee's health benefit plan is subject to the requirements of this section.~~

D. If the enrollee pays the out-of-network provider an amount that exceeds the amount determined under subsection B of this section, the out-of-network provider shall be responsible for:

1. Refunding to the enrollee the excess amount that the enrollee paid to the provider within 30 business days of receipt of the later of payment or notice that the enrollee's managed care plan is subject to the requirements of this section; and

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2. Paying the enrollee interest computed daily at the legal rate of interest stated in § 6.2-301 of the Code of Virginia beginning on the first calendar day after the 30 business days for any unrefunded payments.

E. The amount paid to an out-of-network provider for health care services described in subsection A of this section shall be a commercially reasonable amount, based on payments for the same or similar services provided in a similar geographic area. Within 30 calendar days of receipt of a clean claim from an out-of-network provider, the carrier shall offer to pay the provider a commercially reasonable amount. Disputes between the out-of-network provider and the carrier regarding the commercially reasonable amount shall be handled as follows:

1. If the out-of-network provider disputes the carrier's payment, no later than 30 calendar days after the earlier of receipt of payment or payment notification from the carrier, the provider shall notify the carrier in writing and both parties shall negotiate in good faith no later than 30 calendar days after the earlier of receipt of payment or payment notification from the carrier; and;

2. If the carrier and provider agree to a commercially reasonable payment amount within the good faith negotiation period, the carrier shall pay to the provider any additional amounts agreed upon within 30 calendar days of the agreement; and

3. If the carrier and provider do not agree to a commercially reasonable payment amount within the good faith negotiation period and either party acts within the required timeframes to pursue further action to resolve the dispute, the dispute shall be resolved through arbitration as provided in § 38.2-3445.02 of the Code of Virginia and 14VAC5-405-40. A carrier may not require a provider to reject or return claim payment as a condition of pursuing further arbitration.

F. A health carrier shall not be prohibited from (i) informing enrollees in a nonemergency situation of the availability of in-network facilities that employ or contract with only in-network providers that render surgical and ancillary services; or (ii) offering plan designs that encourage enrollees to utilize specific in-network health care providers.

~~[G. A health carrier shall develop and implement processes to analyze the outcome of arbitration decisions involving the same provider, CPT code, and geographic area in determining a commercially reasonable payment amount.]~~

14VAC5-405-40. Arbitration process.

A. If a good faith negotiation does not result in resolution of the dispute, the health carrier or provider may initiate arbitration by providing the notice of intent to arbitrate form to the commission and the non-initiating party within 10 calendar days following completion of the good faith negotiation period. The notice shall state the initiating party's final payment offer. Failure to timely submit the notice of intent to

arbitrate form shall negate the party's opportunity to seek arbitration for the claim that was the subject of the untimely notice.

B. Nothing shall prevent both parties from continuing to negotiate after the good faith negotiation period. Agreement between the parties may be reached at any time in the process. The arbitration will then be terminated. The claim shall then be paid within 10 calendar days and the matter closed ~~upon agreement.~~

C. The commission shall maintain a list of qualified arbitrators and each arbitrator's fixed fee on its website.

1. Within five calendar days of the notice of intent to arbitrate, the initiating party shall notify the commission of either agreement on an arbitrator from the list or that the parties cannot agree on an arbitrator.

2. If the parties cannot agree on an arbitrator, within five calendar days the commission shall provide the parties with the names of five arbitrators from the list. Within five calendar days, each party is responsible for reviewing the list of five arbitrators and notifying the commission if there is an apparent conflict of interest with any of the arbitrators on the list. Each party may veto up to two of the named arbitrators. If one name remains, that arbitrator shall be chosen. If more than one name remains, the commission shall choose the arbitrator from the remaining names.

3. Once the arbitrator is chosen, the commission shall notify the parties and the arbitrator within five calendar days.

4. The arbitrator's fee is payable within 10 calendar days of the assignment of the arbitrator with the health carrier and the provider to divide the fee equally.

D. Both parties shall agree to and execute a nondisclosure agreement within 10 business days following receipt of the notice of intent to arbitrate.

E. Within 30 calendar days following receipt of the notice of intent to arbitrate, each party shall provide written submissions in support of its position as well as the final payment offers directly to the arbitrator. At this time, the non-initiating party also shall provide its final offer to the initiating party. Each party shall include in its written submission the evidence and methodology for asserting that the amount proposed to be paid is or is not commercially reasonable. Any party that fails to make a written submission required by this subsection without good cause shown will be in default. The arbitrator shall require the defaulting party to pay or accept the final payment offer of the non-defaulting party and may require the defaulting party to pay the entirety of the arbitrator's fee.

F. The arbitrator shall consider the following factors in reviewing the submissions of the parties and making a decision requiring payment of the final offer amount of either the initiating or non-initiating party:

1. The evidence and methodology submitted by the parties to assert that their final offer amount is reasonable;
2. Patient characteristics and the circumstances and complexity of the case, including time and place of service and type of facility, that are not already reflected in the provider's billing code for the service;
3. The arbitrator may also consider other information that a party believes is relevant as part of their original written submission, including data sets developed pursuant to § 38.2-3445.03 of the Code of Virginia. The arbitrator shall not require extrinsic evidence of authenticity for admitting such data sets.

G. Within 15 calendar days after receipt of the parties' written submissions, the arbitrator shall issue a written decision requiring payment of the final offer amount of either of the parties. The arbitrator shall notify the parties and the commission of this decision. The decision shall include an explanation by the arbitrator of the basis for the decision and factors relied upon in making the decision and copies of all written submissions by each party. The decision shall also include information required to be reported to the commission, including the name of the health carrier, the name of the provider, the provider's employer or business entity in which the provider has an ownership interest, the name of the facility where services were provided, and the type of health care service at issue. The claim shall be paid within 10 calendar days after the arbitration decision.

H. Within 30 calendar days of receipt of the arbitrator's decision, either party may appeal to the commission in accordance with the provisions of 5VAC5-20-100 B based only on one of the following grounds: (i) the decision was substantially influenced by corruption, fraud, or other undue means; (ii) there was evident partiality, corruption, or misconduct prejudicing the rights of any party; (iii) the arbitrator exceeded his powers; or (iv) the arbitrator conducted the proceeding contrary to the provisions of § 38.2-3445.02 of the Code of Virginia and commission rules, in such a way as to materially prejudice the rights of the party.

I. A single provider is permitted to bundle claims for arbitration. Multiple claims may be addressed in a single arbitration proceeding if the claims at issue (i) involve identical health carrier or administrator and provider parties; (ii) involve claims with the same or related Current Procedural Technology (CPT) codes, Healthcare Common Procedure Coding System (HCPCS) codes, or in the case of facility services, Diagnosis Related Group (DRG) codes, Revenue Codes, or other procedural codes relevant to a particular procedure, and (iii) occur within a period of two months of one another. Provider groups are not permitted to bundle claims for arbitration if the health care professional providing the service is not the same.

J. All written submissions and notifications required under this section shall be submitted electronically. Individual

information related to any arbitration is confidential and not subject to disclosure.

K. Pursuant to § 38.2-3445.05 of the Code of Virginia, no health carrier or provider shall initiate arbitration with such frequency as to indicate a general business practice.

L. Any payments due from the health carrier to the provider shall be subject to the interest provisions in § 38.2-3407.1 or 38.2-4306.1 of the Code of Virginia, as applicable. [The date of the negotiated agreement or arbitration decision should be considered the date of "receipt of proof of loss" for the purpose of the computation of interest.]

VA.R. Doc. No. R26-8396; Filed March 3, 2026, 12:20 p.m.

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TITLE 17. LIBRARIES AND CULTURAL RESOURCES

BOARD OF HISTORIC RESOURCES

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

Title of Regulation: **17VAC5-40. Regulations Governing Contextualization of Monuments or Memorials for Certain War Veterans.**

Agency Contact: Stephanie Williams, Deputy Director of Administration, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, telephone (804) 482-6082, fax (804) 367-2391, or email stephanie.williams@dhr.virginia.gov.

FORMS (17VAC5-40)

~~Monument or Memorial Contextualization Approval Application (eff. 12/2021)~~

[Application to Propose Contextualization of a Monument or Memorial to War Veterans \(rev. 2/2026\)](#)

VA.R. Doc. No. R26-8603; Filed February 26, 2026, 4:31 p.m.

Regulations

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Notice of Change of Effective Date

Title of Regulation: 18VAC10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations (amending 18VAC10-20-10, 18VAC10-20-15, 18VAC10-20-20, 18VAC10-20-35, 18VAC10-20-40, 18VAC10-20-50, 18VAC10-20-85, 18VAC10-20-87, 18VAC10-20-90, 18VAC10-20-150, 18VAC10-20-160, 18VAC10-20-170, 18VAC10-20-210, 18VAC10-20-230 through 18VAC10-20-340, 18VAC10-20-350 through 18VAC10-20-392, 18VAC10-20-400, 18VAC10-20-420, 18VAC10-20-430 through 18VAC10-20-770, 18VAC10-20-790, 18VAC10-20-795; adding 18VAC10-20-105, 18VAC10-20-191, 18VAC10-20-785; repealing 18VAC10-20-17, 18VAC10-20-25, 18VAC10-20-55, 18VAC10-20-70, 18VAC10-20-75, 18VAC10-20-110 through 18VAC10-20-140, 18VAC10-20-200, 18VAC10-20-220, 18VAC10-20-345, 18VAC10-20-425, 18VAC10-20-780).

Statutory Authority: §§ 54.1-201 and 54.1-404 of the Code of Virginia.

Final action on 18VAC10-20 was published in [42:13 VA.R. 1578-1607 February 9, 2026](#), with an effective date of March 11, 2026. On February 26, 2026, the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects changed the effective date to May 1, 2026, to allow the Department of Professional and Occupational Regulation sufficient time to reconfigure licensing software to implement the regulatory changes.

Effective Date: May 1, 2026.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, fax (866) 465-6206, or email apelscidla@dpor.virginia.gov.

VA.R. Doc. No. R24-7640; Filed March 3, 2026, 2:05 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 20VAC5-315. Regulations Governing Net Energy Metering (amending 20VAC5-315-20; adding 20VAC5-315-100).

Statutory Authority: §§ 12.1-13 and 56-594 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: April 20, 2026.

Agency Contact: Mike Cizenski, Deputy Director, Division of Public Utility Regulation, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9441, or email mike.cizenski@scc.virginia.gov.

Summary:

Pursuant to Chapters 615 and 658 of the 2025 Acts of Assembly, the proposed amendments implement a distribution cost sharing program that allocates the costs of distribution system upgrades needed to interconnect new projects, among participating net energy metering projects sized between 250 kilowatts and less than or equal to three megawatts, with requirements for Phase I and Phase II Utilities for cost recovery, refunds, and exemptions if a developer of a project pays for such program in full.

AT RICHMOND, FEBRUARY 17, 2026

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2026-00002

Ex Parte: In the matter concerning a rulemaking proceeding required by Chapters 615 and 658 of the 2025 Acts of Assembly

ORDER FOR NOTICE AND COMMENT

The Virginia General Assembly enacted legislation during its 2025 Session¹ requiring the State Corporation Commission (Commission) to establish by regulation a distribution cost sharing program for Phase I and Phase II Utilities, as those terms are defined in subdivision A 1 of § 56-585.1 of the Code of Virginia (Code), to construct distribution upgrades required to interconnect

triggering projects.² The new rules shall be finalized by the Commission no later than July 1, 2026.

Under the program:

[w]hen a Phase I or Phase II Utility determines that a qualifying upgrade is required to interconnect a triggering project, such utility shall determine the costs of the qualifying upgrade and the net increase in hosting capacity that would result from the construction of the qualifying upgrade. The costs of the qualifying upgrade shall be subject to approval by the Commission that the costs are reasonable and prudent. The program shall require each Phase I and Phase II Utility to allocate the costs of qualifying upgrades among any sharing projects based on the AC nameplate capacity rating of each sharing project, except that a project shall be exempted from the program if the owner or developer of such project elects to pay in full the approved cost of any associated qualifying upgrade. The Commission shall determine limits on cost recovery for ratepayers and the appropriate time period for cost recovery under the program. The program shall also require that the costs attributed to jurisdictional triggering projects are recovered from jurisdictional sharing projects and costs attributed to nonjurisdictional triggering projects are recovered from nonjurisdictional sharing projects. The Commission may establish a system to refund projects for any interconnection upgrade costs collected during time periods in which such projects are not operational and may provide such refunds upon the petition of the owner of a participating project.³

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that a proceeding should be established to promulgate rules establishing a distribution cost sharing program for Phase I and Phase II Utilities. To initiate this proceeding, the Commission's Staff (Staff) has prepared proposed rules which are appended to this Order (Proposed Rules) as Attachment A. We will direct that notice of the Proposed Rules be given to the public and that interested persons be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules. We find that Staff should be directed to report on or respond to any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules. We further find that a copy of the Proposed Rules should be sent to the Registrar of Regulations for publication in the Virginia Register of Regulations.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed as Case No. PUR-2026-00002.
- (2) All comments or other documents and pleadings filed in this matter shall be submitted electronically to the extent authorized by Rule 5VAC5-20-150, Copies and format, of the Commission's Rules of Practice and Procedure⁴ (Rules of Practice). Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and shall comply with Rule 5VAC5-20-170, Confidential information, of the Rules of Practice. Any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.
- (3) Pursuant to 5VAC5-20-140, Filing and service, of the Rules of Practice, the Commission directs that service on participants and Staff in this matter shall be accomplished by electronic means.

Concerning Confidential or Extraordinarily Sensitive Information, participants and Staff are instructed to work together to agree upon the manner in which documents containing such information shall be served upon one another, to the extent practicable, in an electronically protected manner, even if such information is unable to be filed in the Office of the Clerk, so that no participant or Staff is impeded from participating in this matter.

(4) On or before April 20, 2026, any interested person may file comments on the Proposed Rules by following the instructions found on the Commission's website: scc.virginia.gov/case-information/submit-public-comments. Those unable, as a practical matter, to file comments electronically may file such comments by U.S. mail to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All comments shall refer to Case No. PUR-2026-00002. Individuals should be specific in their comments on the Proposed Rules.

(5) On or before May 11, 2026, Staff shall file with the Clerk of the Commission its report on or response to any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules.

(6) An electronic copy of the Proposed Rules may be obtained by submitting a request to Mike Cizenski, Deputy Director in the Commission's Division of Public Utility Regulation at the following email address: mike.cizenski@scc.virginia.gov. An electronic copy of the Proposed Rules can also be found on the Division of Public Utility Regulation's website: scc.virginia.gov/regulated-industries/utility-regulation/pur-responsibilities/rulemaking. Interested persons may also download unofficial copies of this Order and the Proposed Rules from the Commission's website: scc.virginia.gov/case-information.

(7) Within 10 business days hereof, Staff shall provide copies of this Order by electronic transmission, or when electronic transmission is not possible, by mail, to individuals, organizations, and companies who have been identified by Staff as potentially being interested in this proceeding and the Proposed Rules.

(8) The Commission's Office of General Counsel shall forward a copy of this Order and the Proposed Rules to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(9) The Director of the Commission's Division of Information Resources promptly shall post a copy of this Order on the Commission's website.

(10) Any documents filed in paper form with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, except as modified herein, all filings shall comply fully with the requirements of 5VAC5-20-150, Copies and format, of the Commission's Rules of Practice.

(11) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

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¹ 2025 Va. Acts ch. 615 (SB 1058); 2025 Va. Acts ch. 658 (HB 2266).

² Code § 56-596.6 B.

³ Id.

⁴ 5VAC5-20-10 et seq.

20VAC5-315-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Agricultural business" means any sole proprietorship, corporation, partnership, electing small business (Subchapter S) corporation, or limited liability company engaged primarily in the production and sale of plants and animals, products collected from plants and animals, or plant and animal services that are useful to the public.

"Agricultural net metering customer" means a customer that operates an electrical generating facility consisting of one or more agricultural renewable fuel generators having an aggregate generation capacity of not more than 500 kilowatts as part of an agricultural business under a net metering service arrangement. An agricultural net metering customer may be served by multiple meters serving the agricultural net metering customer that are located at the same or adjacent sites and that may be aggregated into one account. This account shall be served under the appropriate tariff.

"Agricultural renewable fuel generator" or "agricultural renewable fuel generating facility" means one or more electrical generators that:

1. Use as their sole energy source solar power, wind power, or aerobic or anaerobic digester gas;
2. The agricultural net metering customer owns and operates, or has contracted with other persons to own or operate, or both;
3. Are located on land owned or controlled by the agricultural business;
4. Are connected to the agricultural net metering customer's wiring on the agricultural net metering customer's side of the agricultural net metering customer's interconnection with the distributor;
5. Are interconnected and operated in parallel with an electric company's distribution facilities; and
6. Are used primarily to provide energy to metered accounts of the agricultural business.

"Billing period" means, as to a particular agricultural net metering customer or a net metering customer, the time period between the two meter readings upon which the electric distribution company and the energy service provider calculate the agricultural net metering customer's or net metering customer's bills.

"Billing period credit" means, for a non-time-of-use agricultural net metering customer or a non-time-of-use net metering customer, the quantity of electricity generated and fed back into the electric grid by the agricultural net metering customer's agricultural renewable fuel generator or by the net metering customer's renewable fuel generator in excess of the electricity supplied to the customer over the billing period. For time-of-use agricultural net metering customers or time-of-use net metering customers, billing period credits are determined separately for each time-of-use tier.

"Competitive service provider" means a person, licensed by the State Corporation Commission, that sells or offers to sell a competitive energy service within the Commonwealth. This term includes affiliated competitive service providers but does not include a party that supplies electricity or natural gas, or both, exclusively for its own consumption or the consumption of one or more of its affiliates. For the purpose of this chapter, competitive service providers include aggregators.

"Contiguous sites" means a group of land parcels in which each parcel shares at least one boundary point with at least one other parcel in the group. Property whose surface is divided only by public right-of-way is considered contiguous.

"Customer" means a net metering customer or an agricultural net metering customer.

"Demand charge-based time-of-use tariff" means a retail tariff for electric supply service that has two or more time-of-use tiers for energy-based charges and an electricity supply demand (kilowatt) charge.

"Electric cooperative" means an electric distribution company organized pursuant to Chapter 9.1 (§ 56-231.15 et seq.) of Title 56 of the Code of Virginia, owned by its members.

"Electric distribution company" means the entity that owns or operates the distribution facilities delivering electricity to the premises of an agricultural net metering customer or a net metering customer.

"Energy service provider (supplier)" means the entity providing electricity supply service, either tariffed or competitive service, to an agricultural net metering customer or a net metering customer.

"Excess generation" means the amount of electrical energy generated in excess of the electrical energy consumed by the agricultural net metering customer or net metering customer over the course of the net metering period. For time-of-use agricultural net metering customers or net metering customers, excess generation is determined separately for each time-of-use tier.

"Generator" or "generating facility" means an electrical generating facility consisting of one or more renewable fuel generators or one or more agricultural renewable fuel generators that meet the criteria under the definition of "net metering customer" and "agricultural net metering customer," respectively.

"Hosting capacity" means the amount of aggregate generation that can be accommodated on the electric distribution system without any infrastructure upgrades.

"Low-income utility customer" means the same as that term is defined in § 56-576 of the Code of Virginia.

"Net metering customer" means, for an electric cooperative, a customer owning and operating, or contracting with other persons to own or operate, or both, an electrical generating facility consisting of one or more renewable fuel generators having an aggregate generation capacity of not more than 20 kilowatts for residential customers and not more than one megawatt for nonresidential customers. The generating facility shall be operated under a net metering service arrangement. For an investor-owned electric distribution company, "net metering customer" means a customer owning and operating, or contracting with other persons to own or operate, or both, an electrical generating facility consisting of one or more renewable fuel generators having an aggregate generation capacity of not more than 25 kilowatts for residential customers and not more than three megawatts for nonresidential customers. The generating facility shall be operated under a net metering service arrangement.

"Net metering period" means each successive 12-month period beginning with the first meter reading date following the final interconnection of an agricultural net metering customer or a net metering customer's generating facility consisting of one or more agricultural renewable fuel generators or one or more renewable fuel generators, respectively, with the electric distribution company's distribution facilities.

"Net metering service" means providing retail electric service to an agricultural net metering customer operating an agricultural renewable fuel generating facility or a net metering customer operating a renewable fuel generating facility and measuring the difference, over the net metering period, between the electricity supplied to the customer from the electric grid and the electricity generated and fed back to the electric grid by the customer.

"Nonprofit customer" or "not-for-profit customer" means a person that is exempt from federal income taxation, including (without limitation) schools, hospitals, institutions of higher education, public charities, and churches and other houses of religious worship, as determined by the Internal Revenue Service.

"Person" means any individual, sole proprietorship, corporation, limited liability company, partnership, association, company, business, trust, joint venture, or other private legal entity, the Commonwealth, or any city, county, town, authority, or other political subdivision of the Commonwealth.

"Phase I Utility" shall be defined in accordance with subdivision A 1 of § 56-585.1 of the Code of Virginia.

"Phase II Utility" shall be defined in accordance with subdivision A 1 of § 56-585.1 of the Code of Virginia.

"Program" means the distribution cost sharing program established pursuant to 20VAC5-315-100.

"Purchase power agreement provider" or "PPA provider" means, in an electric cooperative service territory, a person registered with the commission's Division of Public Utility Regulation pursuant to 20VAC5-315-77 to offer third-party partial requirements power purchase agreements to customers.

"Qualifying upgrade" means a system upgrade that increases the hosting capacity of the utility's distribution system.

"Registry" means, in reference to a PPA provider, the list of those persons registered with the commission's Division of Public Utility Regulation as PPA providers.

"Renewable Energy Certificate" or "REC" represents the renewable energy attributes associated with the production of one megawatt-hour (MWh) of electrical energy by a generator.

"Renewable fuel generator" or "renewable fuel generating facility" means one or more electrical generators that:

1. Use renewable energy, as defined by § 56-576 of the Code of Virginia, as their total fuel source;
2. The net metering customer owns and operates, or has contracted with other persons to own or operate, or both;
3. Are located on land owned or leased by the net metering customer and connected to the net metering customer's wiring on the net metering customer's side of its interconnection with the distributor;
4. Are interconnected pursuant to a net metering arrangement and operated in parallel with the electric distribution company's distribution facilities; and
5. Are intended primarily to offset all or part of the net metering customer's own electricity requirements. For an electric cooperative, the capacity of any generating facility installed on or after July 1, 2015, shall not exceed the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available. For an investor-owned electric distribution company, the capacity of any generating facility installed between July 1, 2015, and July 1, 2020, shall not exceed the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available.

"Sharing project" means any distributed energy resource with an alternating current (AC) nameplate capacity rating greater than or equal to 250 kilowatts and less than or equal to three megawatts within a Phase I or Phase II Utility's service territory seeking to interconnect to the utility's distribution system and participate in net energy metering pursuant to § 56-

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594 of the Code of Virginia that utilizes distribution system upgrades that were necessary to interconnect a triggering project.

"Small agricultural generating facility" means an electrical generating facility that:

1. Has a capacity of not more than 1.5 megawatts and does not exceed 150% of the customer's expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available;
2. Uses as its total source of fuel renewable energy;
3. Is located on the customer's premises and is interconnected with the utility's distribution system through a separate meter;
4. Is interconnected and operated in parallel with an electric utility's distribution system but not transmission facilities;
5. Is designed so that the electricity generated is expected to remain on the utility's distribution system; and
6. Is a qualifying small power production facility pursuant to the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617).

"Small agricultural generator" means a customer that:

1. Is not an eligible agricultural customer-generator pursuant to § 56-594 of the Code of Virginia;
2. Operates a small agricultural generating facility as part of (i) an agricultural business or (ii) any business granted a manufacturer license pursuant to subdivisions 1 through 6 of § 4.1-206.1 of the Code of Virginia;
3. May be served by multiple meters that are located at separate but contiguous sites;
4. May aggregate the electricity consumption measured by the meters, solely for purposes of calculating 150% of the customer's expected annual energy consumption but not for billing or retail service purposes, provided that the same utility serves all of its meters;
5. Uses not more than 25% of the contiguous land owned or controlled by the agricultural business for purposes of the renewable energy generating facility; and
6. Provides the electric utility with a certification, attested under oath, as to the amount of land being used for renewable generation.

"System peak" for an electric cooperative, means the highest peak, based on the noncoincident peak of the electric cooperative or the coincident peak of all of the electric cooperative's customers of the past three years listed in Part O, Line 20 of Form 7 (Financial And Operating Report - Electric Distribution) filed with the U.S. Department of Agriculture's Rural Utilities Service (RUS), or an equivalent form if a

cooperative is not an RUS borrower, less any portion of the cooperative's total load that is served by a competitive service provider or by a market-based rate.

"Third-party partial requirements power purchase agreement" or "third-party PPA" means, for an electric cooperative, an agreement entered into pursuant to § 56-594.01 K of the Code of Virginia between a customer engaging in net energy metering and a registered PPA provider pursuant to 20VAC5-315-77.

"Time-of-use customer" means an agricultural net metering customer or net metering customer receiving retail electricity supply service under a demand charge-based time-of-use tariff.

"Time-of-use period" means an interval of time over which the energy (kilowatt-hour) rate charged to a time-of-use customer does not change.

"Time-of-use tier" or "tier" means all time-of-use periods given the same name (e.g., on-peak, off-peak, critical peak, etc.) for the purpose of time-differentiating energy (kilowatt-hour) based charges. The rates associated with a particular tier may vary by day and by season.

"Triggering project" means a project application in the interconnection queue at a given substation or feeder that requires a qualifying upgrade to successfully interconnect the project to the electric distribution system.

20VAC5-315-100. Distribution cost sharing program.

A. Purpose and applicability.

1. The purpose of this section is to implement the distribution cost sharing program pursuant to the provisions of § 56-596.6 of the Code of Virginia for a generating facility with an alternating current nameplate capacity greater than 250 kilowatts and less than or equal to three megawatts that seeks to interconnect to a Phase I or Phase II Utility's distribution system and participate in net energy metering pursuant to § 56-594 of the Code of Virginia.

2. This section applies to Phase I and Phase II Utilities and to all triggering projects and sharing projects, as defined in 20VAC5-315-20, interconnecting pursuant to this section.

3. Each Phase I and Phase II Utility shall file on or before December 1, 2026, tariffs and forms, and a Distribution Cost Sharing Agreement consistent with this section, subject to commission approval. These documents should:

- a. Conform to the parameters of this section.
- b. Describe any utility-specific procedures and system configurations.
- c. Include applicable administrative and processing fees as permitted by subsection G of this section.

B. Identification of qualifying upgrades and documentation.

1. When the utility determines through a system impact study that a qualifying upgrade is required to interconnect a

triggering project, the utility shall:

- a. Identify any specific upgrade, including location and function.
- b. Determine an estimate of the cost of such qualifying upgrade, broken out by major cost categories (materials, internal labor, and other direct costs).
- c. Determine and document the net increase in hosting capacity, expressed in kilowatts or megawatts, attributable to the qualifying upgrade.

2. The utility shall provide the applicant of the triggering project, and any subsequently queued applicants with projects on the affected circuit, with a study report that:

- a. Identifies each qualifying upgrade and any non-qualifying upgrades.
- b. Provides the estimated cost of each qualifying upgrade and the net increase in hosting capacity.
- c. States the cost-sharing window opening date and estimated closing date, subject to subsection E of this section.

C. Determination of qualifying upgrade costs.

1. Costs of qualifying upgrades shall be determined by the utility using its Unit Cost Guide.

2. For each qualifying upgrade, the utility shall document:

- a. The quantities of standard components and work items and the associated unit costs drawn from the Unit Cost Guide.
- b. Any site-specific or non-standard cost elements and the basis for such costs.
- c. The resulting total qualifying upgrade cost used for allocation under subsection D of this section.

3. The Unit Cost Guide shall be updated on an annual basis. Utilities shall not be required to seek project-specific commission approval of qualifying upgrade costs when such costs are calculated in accordance with the Unit Cost Guide, applicable standards, and good utility practice.

D. Cost allocation formula and thresholds.

1. Each utility shall apply a pro-rata cost allocation methodology under which the approved cost of qualifying upgrades is allocated among participating projects based on each project's alternating current nameplate capacity relative to the total alternating current nameplate capacity of all participating projects benefiting from the qualifying upgrade.

2. Unless otherwise approved by the commission, the allocation shall be calculated as follows:

A project's allocated share of qualifying upgrade cost is equal to the amount of the project alternating current nameplate in kilowatts divided by the sum of alternating current nameplate in kilowatts for all participating projects,

then that amount multiplied by the approved qualifying upgrade cost.

3. The triggering project shall initially pay 100% of the estimated qualifying upgrade costs prior to construction, with subsequent sharing projects reimbursing the triggering project (and any prior sharing projects) for their proportional shares as payments are received.

4. The same cost allocation methodology shall apply to the reconciliation of estimated and actual qualifying upgrade costs at the conclusion of construction, with refunds or additional billings as provided in subsection F of this section.

5. The distribution cost sharing program shall apply only where:

- a. The total estimated cost of a qualifying upgrade equals or exceeds \$100,000.
- b. The net increase in hosting capacity attributable to the qualifying upgrade is at least 500 kilowatts, measured at the relevant circuit node or point of common coupling.

E. Cost-sharing window and participation.

1. For each qualifying upgrade, the utility shall establish a cost-sharing window during which sharing projects may be allocated costs and triggering and sharing projects may receive refunds.

2. The default cost-sharing window shall be five years from the date the qualifying upgrade is placed in service.

3. Cost sharing shall terminate upon the earlier of:

- a. The end of the cost-sharing window.
- b. The point at which the net increase in hosting capacity created by the qualifying upgrade is fully utilized.
- c. The point at which the remaining net cost of the qualifying upgrade to participating projects falls below the \$100,000 threshold.

4. A triggering project may elect to opt out of the distribution cost sharing program by paying in full the approved cost of any associated qualifying upgrade, in which case such project shall not be treated as a sharing project and shall not be eligible to receive funds under this section.

F. Payments, reconciliation, and refunds.

1. Payment obligations.

a. Prior to the construction of qualifying upgrades, the triggering project shall pay the utility the estimated costs of all required interconnection upgrades, including qualifying and nonqualifying upgrades.

b. Each sharing project shall pay its allocated share of qualifying upgrade costs, plus its own nonqualifying upgrade costs, prior to construction of any upgrades necessary for its interconnection.

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2. Reconciliation of estimated and actual costs.

a. Upon completion of the qualifying upgrade, the utility shall determine actual costs and recalculate each project's share under subsection D of this section.

b. The utility shall issue a final bill or refund to each participating project reflecting the difference between the amounts previously paid and the project's final allocated share, net of any applicable administrative or processing fees approved under subsection G of this section.

3. Refunds during cost-sharing window.

a. Refunds based on new sharing projects.

(1) When a new sharing project enters the program within the cost-sharing window and pays its allocated share of qualifying upgrade costs, the utility shall recalculate cost responsibility for all participating projects using the methodology in subsection D of this section.

(2) The utility shall then issue refunds or additional bills, as applicable, so that each participating project's net payments reflect its updated allocated share, net of applicable administrative and processing fees.

(3) These refunds and additional bills shall be administered automatically by the utility and shall not require a petition to the commission.

b. Final billing process.

(1) After all participating projects associated with a qualifying upgrade have been approved for operation, and actual qualifying upgrade costs are known, the utility shall perform a final reconciliation of costs and allocations under subsection E of this section.

(2) The utility shall issue any final refunds or additional bills so that each participating project's total payments equal its final allocated share of the actual qualifying upgrade costs, net of applicable administrative and processing fees.

c. Refunds during the cost-sharing window shall occur in the two circumstances described in subdivisions 3 a and 3 b of this subsection.

d. Process and timing.

(1) For refunds and additional bills issued under subdivisions 3 a and 3 b of this subsection, the utility shall perform the recalculation and issue any resulting refund or additional bill within 60 days of (i) receipt of payment from the new sharing project in the case of subdivision 3 a of this subsection or (ii) completion of the final reconciliation after all participating projects have been approved for operation in the case of subdivision 3 b of this subsection.

(2) Refunds may be issued either as direct payments or as bill credits applied to future interconnection-related charges under this program, at the election of the project owner, as provided in the utility's tariff.

G. Administrative and processing fees.

1. Each utility shall include in its compliance filing reasonable administrative and processing fees to recover incremental costs of designing, implementing, and operating systems necessary to track qualifying upgrades, cost allocations, payments, and refunds and to avoid cost shifting to nonparticipating customers.

2. Administrative and processing fees may include:

a. A one-time application or program enrollment fee for projects electing to participate in the distribution cost sharing program.

b. A per-allocation processing fee assessed on participating projects each time the costs of a qualifying upgrade are reallocated due to the addition of a new sharing project or final reconciliation.

c. A processing fee for each refund administered as part of a cost-sharing recalculation or nonoperational refund.

3. Administrative and processing fees shall be subject to commission review and approval.

H. Jurisdictional and nonjurisdictional cost allocation.

1. The costs attributed to jurisdictional triggering projects shall be recovered only from jurisdictional sharing projects, and costs attributed to nonjurisdictional triggering projects shall be recovered only from nonjurisdictional sharing projects, consistent with § 56-596.6 of the Code of Virginia.

2. Each utility shall identify and document within the Distribution Cost Sharing Agreement whether a project is jurisdictional or nonjurisdictional and shall maintain records sufficient to demonstrate compliance with this subsection.

I. Dispute resolution.

1. In the event of a dispute arising out of the program, either party (project owners or utility) shall provide the other parties with a written notice of dispute. The notice shall describe in detail the nature of the dispute, which may include: (i) the designation of or cost of a qualifying upgrade, (ii) the calculation of net hosting capacity, (iii) cost allocations under subsection D of this section, and (iv) eligibility for or amount of a refund under subsection F of this section. The parties shall make a good faith effort to resolve the dispute informally within 10 business days.

2. If the dispute has not been resolved within 10 business days after receipt of the notice, either party may seek resolution assistance from the Division of Public Utility Regulation where the matter will be handled as an informal complaint.

Alternately, the parties may, upon mutual agreement, seek resolution through the assistance of a dispute resolution service. The dispute resolution service will assist the parties in either resolving the dispute or selecting an appropriate dispute resolution venue (e.g., mediation, settlement judge,

early neutral evaluation, or technical expert) to assist the parties in resolving the dispute. Each party shall conduct all negotiations in good faith and shall share equally in any costs paid to neutral third parties.

3. If the dispute remains unresolved, either party may petition the commission to handle the dispute as a formal complaint or may exercise whatever rights and remedies the party may have in equity or law.

J. Reporting and transparency. Each utility shall submit to the Division of Public Utility Regulation, on a biannual basis, a report listing all executed Distribution Cost Sharing Agreements and associated qualifying upgrades during the reporting period, including:

1. Circuit or node identifier.
2. Description of all qualifying upgrades.
3. Initial estimated and actual costs.
4. Net increase in hosting capacity.
5. Identity and alternating current nameplate capacity of triggering and sharing projects.
6. Cost allocations.
7. Payments received.
8. Refunds issued.
9. Administrative and processing fees collected.

VA.R. Doc. No. R26-8584; Filed February 19, 2026, 9:59 a.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for deletion and the listed agencies have opened up a 30-day public comment period. The listed agencies had previously identified these documents as certified guidance documents, pursuant to § 2.2-4002.1 of the Code of Virginia. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to view the deleted document and comment. This information is also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact.

STATE BOARD OF HEALTH

Titles of Documents: [Drug Assistance Program for Patients Needing Second Line Tuberculosis \(TB\) Drugs.](#)

[Guidelines for the Use of Isoniazid or Rifapentine for Treatment of Latent TB Infection in Health Department Settings.](#)

[Memorandum - Bloodborne Pathogen Training for School Personnel and Management of Exposure-Prone Incidents in Schools.](#)

[Memorandum - Law-Enforcement Officer and Deemed Consent.](#)

[Memorandum - STD - HIV Interview Periods for HIV Spousal Notification.](#)

[Policies Regarding Treatment for Active or Suspected Tuberculosis Whose Regimen Did Not Contain a Full Course of Rifamycin.](#)

[Public Safety Employees and Testing for Bloodborne Pathogens.](#)

[Recommendations and Procedures for the Use of Therapeutic Drug Monitoring.](#)

[Recommended Sample Collection Schedule for Monitoring Smear and Culture Conversion.](#)

[TB Drug Assistance Program Procedures.](#)

[Tuberculosis Guidelines for Determination of Completion of Treatment.](#)

[Virginia Bleeding Disorders Program Fact Sheet.](#)

[Virginia Tuberculosis Homeless Incentive and Prevention Program.](#)

Public Comment Deadline: April 22, 2026.

Effective Date: April 23, 2026.

Agency Contact: John Kotyk, Legislative and Regulatory Coordinator, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7437, or email boardofhealth@vdh.virginia.gov.

GENERAL NOTICES

DEPARTMENT OF ENVIRONMENTAL QUALITY

Ambrosia Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) - Permit by Rule - Brunswick County

Ambrosia Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project in Brunswick County, pursuant to 9VAC15-60. The project number is RE00000378. The proposed project location is off Browns Creek Road, Broadnax, Virginia with a geographic information (GIS) centroid of Latitude 36.675115, Longitude -77.914798. The proposed project will have a maximum rated power capacity of 65-megawatt alternating current. The total proposed project site is 830.3 acres with a disturbance area of approximately 550 acres. The solar array will be comprised of approximately 115,000 photovoltaic modules. The project developer is Terra Form Power based in Charlottesville, Virginia.

Contact Information: Amber Foster, Renewable Energy Permit by Rule Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 774-8474, or email amber.foster@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Opportunity for Review of Eligibility Manual Draft Transmittal

A draft of Transmittal #DMAS-38, the Virginia Medical Assistance Eligibility Manual, which includes policy clarifications, updates and revisions, is available at <https://www.dmas.virginia.gov/media/pzdmugd/tn-dmas-38-eff-4-1-26-draft.pdf>.

Contact Information: Syreeta Stewart, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 298-3863, fax (804) 786-1680, TDD (800) 343-0634, or email syreeta.stewart@dmas.virginia.gov.

VIRGINIA DEPARTMENT OF PLANNING AND BUDGET

Public Comment Opportunity for Commercial Activities List

Pursuant to § 2.2-1501.1 of the Code of Virginia, the Virginia Department of Planning and Budget (DPB) published the 2025 Commercial Activities List (CAL) on February 17, 2026. The CAL is available at <https://dpb.virginia.gov/forms/20260217-1/VirginiaCommercialActivitiesList.pdf>.

DPB is seeking written comments on the CAL and invites recommendations from the public regarding activities being performed by state agencies that might better be performed by the private sector. The public comment period opens March 23, 2026, and closes April 22, 2026. Please include CAL in the subject of the email.

Contact Information: Cari Corr, Commercial Activities List, Virginia Department of Planning and Budget, 1111 East Broad Street, Fifth Floor, Richmond, VA 23219, telephone (804) 225-4549, or email cari.corr@dpb.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <https://commonwealthcalendar.virginia.gov>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumulat.pdf>.

Filing Material for Publication in the Virginia Register of Regulations: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

General Notices
